Supreme Court, U.S.
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No. ——

IN THE
Supreme Court of the United States
OCTOBER TERM, 1995

SEABURY MANAGEMENT, INC.,
Petitioner,
v.
PROFESSIONAL GOLFERS' ASSOCIATION OF AMERICA, INC., MIDDLE ATLANTIC SECTION OF PROFESSIONAL GOLFERS' ASSOCIATION OF AMERICA, INC.,
Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the court below erred in finding as a matter of law that a trade association and its separate corporate members are, like a corporate parent and its wholly-owned subsidiaries, part of a single economic unit and thus incapable of conspiring with one another to restrain trade.

2. Whether the court below erred in rejecting Petitioner's relevant product-market definition for failure to include as market participants corporate entities barred from competing for market share.

3. Whether the rejection of Petitioner's tortious interference claim must be overturned on a reversal of the antitrust rulings below.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Seabury Management, Inc. ("Seabury") respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App. 1a-19a) is not yet reported. The opinion and order of the district court (App. 20a-51a) are unreported.

JURISDICTION

The court of appeals entered its judgment on April 26, 1995. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The Sherman Act, Section 1 prohibits all contracts, combinations or conspiracies in restraint of trade. 15 U.S.C. § 1. The Sherman Act, Section 2 prohibits monopolizations and attempted monopolizations. 15 U.S.C. § 2. These statutory provisions are more fully set forth at App. 52a.

STATEMENT OF THE CASE

Seabury was the producer of the only large regional golf trade show (the "East Coast Show") in the United States not owned or operated by the Professional Golfers' Association of America, Inc. ("PGA") or one of its affiliated PGA Sections. Seabury entered the golf trade show market in 1990 under a six-year contract with the Middle Atlantic Section of the PGA ("MAPGA"), the essential terms of which promised MAPGA a share of the show's annual revenues in exchange for the Section's help in actively promoting and publicizing the show and assisting, as requested, with its management. Pursuant to the contract, Seabury obtained use of MAPGA's name and logo for show promotional purposes, and retained the right to select the show's location each year (either within or outside the MAPGA region).

It did not take long for the PGA to size up Seabury's East Coast Show as a competitive threat in the marketplace and to embark on a strategy to eliminate it. By early 1992, the objective was achieved. Through issuance of a set of PGA Section Activity Guidelines, the PGA Sections were in late 1990 for the first time directed not to engage in the promotion or sponsorship of non-PGA golf trade shows. In addition, the PGA agreed with its principal trade show exhibitors, the Golf Manufacturers and Distributors Association ("GMDA"), that the PGA would limit the number of regional and national golf trade shows to be held each year and insure PGA participation in each of them, in exchange for which

GMDA agreed that its membership would only exhibit at the PGA shows. MAPGA was then told by the PGA to end its contract with Seabury after the conclusion of the 1991 East Coast Show. There was strong resistance, but MAPGA ultimately acquiesced under pressure, and in January, 1992, announced its withdrawal of support for the East Coast Show. Without MAPGA sponsorship, the East Coast Show was unable to attract the major exhibitors of golf equipment, particularly in light of the GMDA agreement to limit membership participation to PGA shows only. In March, 1992, Seabury was forced to terminate its operations and cancel all future East Coast shows.

Seabury then commenced the instant lawsuit, charging defendants PGA and MAPGA with engaging in unlawful anticompetitive conduct under Sections 1 and 2 of the Sherman Act, and with breach of and tortious interference with contractual relationships. Following a 13-day trial, a jury found for Seabury on all counts and awarded plaintiff $2.6 million in compensatory damages and $4.8 million in punitive damages. By special verdict, the jury found as a matter of fact that the PGA and its member sections were separate economic units, each having its own independent budget and profit center. The jury further found that the record evidence established the market of large, regional or national golf trade shows as the relevant product market for purposes of this case, confined geographically to those regional or national shows located east of the Mississippi River.

On Defendant's post-trial motions, the district judge, Marvin T. Garbis, set aside the jury verdict on all but the breach-of-contract count and overturned in their entirety both the compensatory and punitive damages awards. App. 20a-51a. Relying on this Court's decision in *Copperweld Corp. v. Independence Tube Corp.*, 467 U.S. 752 (1984), the lower court ruled that the PGA and its member sections were sufficiently likened to a corporate parent

and its wholly-owned subsidiaries to be incapable of entering into a contract, combination or conspiracy in restraint of trade. App. 25a-28a. The separate Sherman Section 1 jury finding of an unlawul agreement between the PGA and GMDA—to limit the number of PGA trade shows and restrict exhibitor participation at those shows to GMDA members only—was overturned by the district court as nothing more than an acceptable PGA response to distributor complaints of proliferating trade shows with no constraints on who could attend (App. 29a-30a), citing *Matsushite Electrical Industrial Co. v. Zenith Radio,* 475 U.S. 574 (1986). Regarding the Sherman Section 2 monopolization and attempted monopolization jury verdicts, they were thrown out because of the district judge's disagreement over market definition, specifically not including in the relevant market the West Coast Show and sectional trade shows. App. 30a-36a. With all the antitrust violations overturned the district court found no cause to conclude that breach of the Seabury/MAPGA contract was due to tortious interference on the PGA's part. App. 44a-49a. Additionally, it refused to credit any portion of the testimony by Seabury's expert on compensatory damages. App. 37a-42a.

On appeal, the United States Court of Appeals for the Fourth Circuit affirmed the district court's judgment as a matter of law in favor of Defendants PGA and MAPGA on the antitrust and tortious interference counts (App. 6a-9a), and affirmed the denial of punitive damages (App. 12a-13a). A majority of the appellate court disagreed, however, with the lower court's denial of compensation damages as a consequence of the contract breach, and reversed and remanded for a reassessment of said damages. App. 11a and 13a.

REASONS FOR GRANTING THE WRIT

1. In *Copperweld Corp. v. Independence Tube Corp., supra,* 467 U.S. at 767-77, this Court held that a parent corporation and its wholly-owned subsidiary are in reality a single economic unit, and, as such, are incapable of conspiring with one another in violation of Section 1 of the Sherman Act. The *Copperweld* holding was specifically limited to the parent/wholly-owned subsidiary relationship and did not extend to a parent corporation "with an affiliated corporation it does not completely own. *Id.* at 767.

The Fourth Circuit has moved well beyond this Court's *Copperweld* decision in holding that a golf trade association and its separately incorporated member sections are incapable of conspiring to restrain competition from non-member organizations. The ruling below conflicts with this Court's precedents and the precedents of other federal courts of appeals. The PGA and its member sections are all separately incorporated entities, each engaged in its own commercial activities and having its own independent budget. App. 27a. The relationship is admittedly not that of parent and wholly-owned subsidiaries (App. 27a), but rather that of a trade association and its corporate membership.

Heretofore, it has been generally accepted jurisprudence that "[b]usiness trade associations are, by definition, organizations of competitors," and, as such, "they automatically satisfy the combination requirements of § 1 of the Sherman Act." *FTC Enforcement Efforts Involving Trade and Professional Associations,* 46 Antitrust L.J. 640 (1977). The PGA of America and its member sections represent just such a structural arrangement—*i.e.*, an umbrella association controlled by the votes of its member institutions (as elected members of the PGA's Executive Committee and Board of Directors), all separately incorporated and operating as distinct economic units, each subject to various PGA policies, regulations and guide-

lines, but also having its own independent center for commercial activity. App. 27a. This is decidedly not the *Copperweld* relationship (App. 27a). It is, instead, very much akin to the structural arrangement of the NCAA and its member schools, or the NFL and its member teams.

Notably, this Court, just two weeks after deciding *Copperweld,* declined to place the NCAA's structural arrangement with its member schools beyond antitrust scrutiny on the "single economic entity" theory. It, instead, declared in *NCAA v. Board of Regents, Oklahoma University,* 468 U.S. 85, 98-99 (1984), that the plan of the NCAA and certain of its member schools to limit television coverage of college football games was an unreasonable restraint of trade. So, too, in *Los Angeles Memorial Coliseum Commission v. NFL,* 726 F.2d 1381, 1387-90 (9th Cir. 1984), the Ninth Circuit—following the Second Circuit Court of Appeals' lead in *North American Soccer League v. NFL,* 670 F.2d 1249, 1255-57 (2d Cir. 1982), *cert. denied,* 459 U.S. 1074 (1982), only a few years earlier—flatly rejected the "single economic entity" argument advanced by the NFL and its member teams to avoid the antitrust consequences of an agreement to block a franchise move to another team's territory. This Court denied certiorari only months after *Copperweld* was decided. *Los Angeles Memorial Coliseum Commission v. NFL,* 469 U.S. 990 (1984).

The Fourth Circuit wholly disregards this prior case law in holding that the PGA and its member sections operate as one, rather than as separate entities, and are thus incapable of violating Section 1 of the Sherman Act. App. 6a. It is, however, accepted as undisputed fact that the PGA and its sections are "separately incorporated" (App. 27a), that each "maintains its own revenues" (App. 27a), that each "has its own officers" (App. 27a), and that each independently "conducts programs intended to benefit members of that section only" (App. 27a).

Moreover, with specific reference to the golf trade show market—found by both courts below to be the relevant market for purposes of the instant case (App. 8a and 32a-33a)—there was abundant evidence, according to the circuit and district courts (App. 8a and 33a-35a), of head-to-head trade show competition among the sections, and in some instances even between certain section shows and the PGA regional and national shows.

It was, indeed, the proliferation of section trade shows that prompted adoption of the 1990 Section Activity Guidelines by the PGA and its member sections. App. 29a. No one disputes that these Guidelines prohibited the PGA sections, after 1990, from independently sponsoring, supporting, or otherwise participating with non-PGA entities, such as Seabury, in the development and operation of competitive trade shows. As a direct consequence of this agreement to exclude outside competition from the golf trade show market, MAPGA's six-year contract with Seabury pertaining to the East Coast Show was prematurely terminated after only two years. App. 23a-25a.

This concerted refusal to deal on the part of the PGA and its member sections was not the action of a single economic entity, but was an adopted course of action based on newly developed Guidelines agreed to by the PGA membership, all separately incorporated and each having a distinct revenue base and its own set of commercial activities. App. 27a. Nonetheless, the Fourth Circuit analogized the present situation to a medical peer review board, which the appeals' court previously found to be incapable of violating Section 1 of the Sherman Act. *See Oksanen v. Page Memorial Hospital*, 945 F.2d 696 (4th Cir. 1991), *cert. denied*, 112 S.Ct. 973 (1992). But agreements reached by a physicians' peer review board regarding patient complaints against fellow practitioners are a far cry from a trade association of separate and distinct corporate entities agreeing not to do business in the relevant market with trade show competitors who are not PGA members. The former board action removes

from the marketplace only those practitioners whose standard of treatment is found to be unacceptable; the latter board action, by contrast, bars from the marketplace healthy competition that threatens through good and effective competitive practices to reduce the market share of member corporations.

This Court's *Copperweld* decision does not insulate from antitrust liability under Section 1 of the Sherman Act the Guideline activity of the PGA and its member sections—which was intended to, and did in fact, close the golf trade show market to outside competition. By straining to equate a trade association and its corporate membership, on the one hand, with a parent corporation and its wholly-owned subsidiaries, on the other hand, the Fourth Circuit goes well beyond the limited ruling in *Copperweld* and puts itself squarely in conflict with this Court's decision in *NCAA v. Board of Regents, Oklahoma University, supra,* 468 U.S. at 111-12, and the decisions of the Second and Ninth Circuits, respectively, in *North America Soccer League v. NFL, supra,* 670 F.2d at 1257-58, and *Los Angeles Memorial Coliseum Commission v. NFL, supra,* 726 F.2d at 1388-89. Plenary review is therefore required.

2. The Fourth Circuit's erroneous ruling on Seabury's Sherman Act, Section 2 monopolization and attempted monopolization claims (App. 7a-9a) provides additional reason for Supreme Court review in this case. The relevant product market of golf trade shows was readily established. App. 8a. In overturning the jury verdict, however, the district court determined that Seabury had failed to demonstrate the PGA's "power to control market prices or exclude competition" (*United States v. E.I. duPont de Neumours & Co.*, 351 U.S. 377, 391 (1956)) because Seabury had included as the only market participant (other than its own East Coast Show) the PGA's Orlando Show, and had not taken into account potential competition from other section trade shows, and in particular the West Coast Show run by

the PGA's Southern California Section. App. 33a-35a. On appeal, the circuit court agreed that the narrowing of market participants only to two was fatal to Seabury's market definition. App. 8a.[1]

Yet, but for Seabury's East Coast Show, the reality is that, after adoption of the 1990 Section Activity Guidelines, the PGA stood alone as the controlling market participant with respect to golf trade shows. It immediately purchased the West Coast Show from its Southern California Section. App. 28a, n.6. No PGA section thereafter could become involved in trade show activity except in collaboration and conjunction with the PGA directly. Thus, the agreed Guidelines—which we continue to maintain violated §1 of the Sherman Act (pp. 5-8, *supra*) —ended the sort of independent section involvement with outside trade show competitors which had enabled Seabury to gain entry into the marketplace under its contract with MAPGA. The PGA thus exerted monopoly power after 1990 whether or not section trade shows are or are not included in the relevant market.

This conclusion is all the more inescapable if, as the Fourth Circuit held (App. 6a), the PGA and its member sections are to be regarded as a single economic unit incapabale of conspiring with one another in violation of § 1 of the Sherman Act. The essential point is that, whether the PGA's dominance over the market activities of its member sections is traced to the structural arrange-

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[1] The Fourth Circuit incorrectly states that "[i]n addition to the West Coast Show, the PGA Orlando Show, and the East Coast Show, smaller trade shows are operated by individual sections, groups of manufacturers, and other organizations." App. 8a. With the exception of the East Coast Show, there is no record evidence of any golf trade show operated by "groups of manufacturers, and other organizations" without PGA or section involvement, and, indeed, the district court never even suggested as much—but based its rejection of Seabury's market definition on the exclusion from the market of "sectional shows and the West Coast Show" (App. 35a).

ments of the association (as the courts below held), or to concerted action under agreed Guidelines restraining competition in the golf trade show market (as the jury found and we continue to maintain), the PGA necessarily had the same degree of monopoly power in that market after 1990 whether its member sections are included as participants or excluded. It was the exercise of this monopoly power which forced MAPGA's contract breach with Seabury and the premature termination of the East Coast Show.

The Fourth Circuit ruling to the contrary is, on its own terms, wholly irreconcilable. It disposes of Seabury's Sherman Act, Section 1 claim on the finding that the PGA and its member sections cannot reasonably be found to be separate entities capable of engaging in an antitrust conspiracy. App. 6a. Yet, the Sherman Act, Section 2 claim is defeated below only because the PGA and its member sections are regarded by the Fourth Circuit as separate, competing entities in the golf trade show market, thereby arguably removing the prospect that PGA alone had monopoly power. App. 8a. It simply cannot be both ways, and a grant of certiorari is therefore necessary to correct the oxymoron.

3. Moreover, by reason of the Fourth Circuit's errors regarding the antitrust claims, Seabury's claim of tortious interference with the MAPGA contract was wrongly rejected as well. App. 12a-13a. Quite clearly, if the PGA and MAPGA engaged in a concerted effort to restrain outside competition from entering or remaining in the golf trade show market, in violation of Section 1 of the Sherman Act—or if MAPGA's contract breach was due to an unlawful exercise of PGA's market power in the relevant market, in violation of Section 2 of the Sherman Act—such anticompetitive behavior aimed at defeating the continued operation of the East Coast Show during the remaining four years of the Seabury-MAPGA contract would be "without legal justification or excuse," and thus

would easily satisfy the malice requirement that the court below found wanting. *See, e.g., Kelko Disposal, Inc. v. Browning-Ferris Industries of Vermont, Inc.*, 845 F.2d 404, 409-10 (2d Cir. 1988), *affirmed*, 442 U.S. 257 (1989); *and see Shaeffer v. Miller*, 587 A.2d 491, 493 (Md. 1991).

If, as we urge, this Court should agree that the antitrust rulings below warrant plenary review, the error below regarding the tortious interference claim should also be corrected.

CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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